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THE INTERIM

DECEMBER 2000

HELENA, MONTANA

VOL. XII NO. 19

DISTRICTING AND APPORTIONMENT COMMISSION

Commission Adopts Criteria...The Districting and Apportionment Commission met on November 16 to adopt initial guidelines and criteria for redistricting. Mandatory criteria are based on the U.S. and Montana Constitutions, federal law, and case law. Discretionary criteria are traditional redistricting criteria that have been used in the course of Montana redistricting over the past three decades.

Mandatory criteria for legislative districts are population equality and a maximum population deviation of plus or minus 5% from the ideal population, compact and contiguous districts, the protection of minority voting rights and compliance with the Voting Rights Act, and that race cannot be the predominant factor to which the traditional discretionary criteria are subordinated. Discretionary criteria for legislative districts are following the lines of political units, following the TIGER/Line files of the U.S. Bureau of the Census, and keeping communities of interest intact.

The Commission rejected the preservation of existing districts as discretionary criteria. The Commission adopted an initial approach to the aggregation and allocation of the over 126 racial and ethnic categories that resulted from the U.S. Census Bureau's decision to allow individuals to select more than one race and their ethnicity in the 2000 Census. The Commission adopted the approach offered by the federal Office of Management and Budget (OMB). (For a complete description of the OMB approach, visit the Legislative Branch's home page at <http://leg.state.mt.us> and follow the links to "Committees" and "Districting and Apportionment Commission".)

The Commission postponed action on deciding whether to use the adjusted or unadjusted population database, pending a decision by the Director of the Bureau of the Census that is expected in late February. The Commission also postponed action on selecting a starting point and setting a date for the public hearing required on the congressional districts (plural - hope springs eternal).



To Meet in March...The Commission is expected to meet in early March to gather more information on the use of the adjusted or unadjusted data and to make the final decisions on the remainder of the issues. All of the meeting materials are available on the Districting and Apportionment Commission's website through the Legislative Branch home page at <http://leg.state.mt.us>.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or by mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

LEGISLATIVE FINANCE COMMITTEE

Budget Analysis Well Under Way...The Legislative Fiscal Division (LFD) is well into the analysis of the executive budget that was officially received from Governor Racicot on November 15. The LFD fiscal analysts began the analysis in the late summer and, as of this printing, are completing the narratives and tables that will appear in the *Legislative Budget Analysis, 2003 Biennium* for distribution and presentation during the first days of the legislative session. The budget analysis publication will be a 4-volume set that will include:

- ▶ Volume I - summary, statewide analysis of the budget, various statewide fiscal issues, and reference material;
- ▶ Volume II - revenue estimates and economic assumptions used to determine those estimates; and
- ▶ Volumes III and IV - detailed budget analysis for each state agency.

These volumes provide a comprehensive look at state government from a fiscal perspective. Besides being the workbooks for the budget deliberation process (particularly for the House Appropriations Committee, Senate Finance and Claims Committee, and the various joint appropriations subcommittees), the books serve as excellent reference material for all legislators seeking information concerning agency budgets and fiscal matters.

The books are prepared prior to the beginning of the legislative session for use during the session. After the session ends, the LFD staff will transform the publication into the *Legislative Fiscal Report, 2003 Biennium*, which will document the decisions made on fiscal matters during the 2001 regular legislative session.

While the books will be available to legislators on the first day of the session, legislators and citizens with internet access will be able to get an earlier look at the material during the last week of December on the LFD website at <http://leg.state.mt.us/fiscal/index.htm>. The *Legislative Budget Analysis, 2003 Biennium* should be posted as early as December 22. In addition, a budget summary will be sent to all legislators in advance of the legislative session.

The budget analysis report will be formally presented to a joint meeting of the Legislative Finance Committee, the House Appropriations Committee, and the Senate Finance and Claims Committee at the beginning of the legislative session.

For further information about the budget analysis report, please contact the LFD at 444-2986.

Committee Approves Bill Drafts...At its November 16 meeting, the Legislative Finance Committee (LFC) approved two more bill drafts recommended by the Mental Health Managed Care Subcommittee. Previously, in October, the LFC approved four bills (LC 367, LC 368, LC 369, and LC 370) recommended by the Subcommittee. The two bills approved in November are LC 513 to continue the interim study of mental health services and LC 514 to allow the use of video teleconferencing in court proceedings for persons with a mental illness.

LC 513 recommends a continuation of the study because several interim committees have proposed study topics that deal with mental health services, including access to mental health services at Veterans' Administration hospitals; treatment of mentally ill persons within the prison system; and continued oversight and monitoring of the public mental health system by the LFC and the Children, Families, Health, and Human Services Interim Committee. The LFC believes that it is best to ensure that the individual efforts are combined in a study by a subcommittee of the LFC composed of membership from all of the other interim committees that will be studying mental health issues next interim.

LC 514 would allow the use of video teleconferencing in certain court proceedings dealing with mental illness. The draft legislation also provides for costs associated with the teleconferencing. The Montana State Hospital has a video conference hook-up as do many medical facilities, particularly in eastern Montana, and one of the planned improvements for Montana courts is video teleconferencing capability.

FIFTY-SEVENTH LEGISLATURE COMMITTEE ASSIGNMENTS

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REVENUE AND TAXATION COMMITTEE

Committee Adopts Preliminary General Fund Revenue Estimates...The Revenue and Taxation Committee is responsible for developing an estimate of the amount of revenue available for appropriation during the ensuing legislative session (5-18-107, MCA). The Committee's estimate, as introduced in the Legislature, is the Legislature's current revenue estimate until amended or adopted by both houses of the Legislature. At its November 17 meeting, the Committee adopted general fund revenue estimates, by source of revenue, as well as revenue estimates for certain nongeneral fund sources. Executive branch agencies are expected to use these estimates and the underlying assumptions in estimating revenue and the development of fiscal notes.

The Committee considered recommendations presented by the Legislative Fiscal Division (LFD) and the Department of Revenue. The Committee used the LFD's recommendations and estimates as the starting point for making its decisions. Typically, the Committee focuses its attention on the major sources of revenue, including the individual income tax, statewide property taxes, investment earnings, and the corporation license tax. These revenue sources account for about 80% of total general fund collections. The differences in the estimates between the LFD and the Department were relatively insignificant. In fact, the overall difference in general fund estimates was a little over \$9 million for the 3-year forecast period (FY 2001 through FY 2003). The significant differences in the estimates included the telecommunications excise tax, the foreign capital depository tax, and interest earnings in the treasurer's cash account.

The Department told the Committee that it expects to collect significantly more revenue from the telecommunications excise tax than is shown by the LFD estimate as a result of increased compliance efforts and audit activities. The Committee decided not to adopt the Department's estimate for this tax until the Legislature had more information on the number of companies that may be subject to the tax. The Committee also decided not to include the LFD's estimate for the foreign capital depository tax until there is more certainty that a depository will open for business in the state.

The Committee adopted the following amounts for the general fund: FY 2001--\$1.185 billion, FY 2002-- \$1.193 billion, and FY 2003--\$1.208 billion.

Income Tax Subcommittee Recommends Major Overhaul of Individual Income Taxes...The Income Tax Subcommittee has been working since August to develop a proposal that would simplify the state's individual income tax system and would

diffuse the perception that Montana is a high income tax state because of its top marginal tax rate of 11% (see the September, October, and November issues of *THE INTERIM* for prior coverage). At its November 16 meeting, the Subcommittee unanimously adopted a proposal to replace the existing income tax system with a new system that would use federal taxable income as the starting point for determining Montana taxable income. The proposal would require taxpayers to use the same filing status on the state income tax returns as they do on federal returns. Sen. Alvin Ellis, Jr. told the Subcommittee that the new method would reduce taxpayer compliance costs significantly.

Montana taxable income under the proposal would be equal to federal taxable income plus interest on non-Montana government bonds, less the following exclusions:

- income that federal law does not allow to be taxed at the state level;
- retirement income of up to \$4,700 (phased-out for income above \$60,000 for married, filing joint);
- tip income;
- active duty military pay;
- unemployment compensation; and
- premium payments for medical and long-term care insurance.

Income tax rates ranging from 4% to 6.6% would be applied to Montana taxable income by filer type (married, filing joint; head-of-household; single filers; and married, filing separately) to determine Montana tax liability. According to an analysis prepared by the Department of Revenue, income tax collections under the proposal would be about \$6.2 million less than current law. Overall, the tax liability of heads of household filers and married, filing joint would fall by about 13.8% and 10.9%, respectively. The tax liability for married taxpayers who currently file separately on the same return would increase by about 2.7%, while the tax liability for single filers would increase by about 2.2%. On average, retiree households would experience almost no change in tax liability.

Committee Endorses Subcommittee Recommendation...The Revenue and Taxation Committee voted 10 to 2 to approve the Income Tax Subcommittee's recommendation to revise the state's income tax system. The proposal will be preintroduced by request of the Committee with Sen. Ellis as the chief sponsor.

STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE

To Meet Twice in December...To take care of unfinished business related to disaster and emergency services programs and the National Guard's Youth Challenge Program, the State Administration, Public Retirement Systems, and Veterans' Affairs

Committee (SAIC) will conduct a meeting on Tuesday, December 5 in Helena and will visit the Youth Challenge Program in Dillon on December 8.

Several local government and law enforcement officials from Libby, Lincoln County, Missoula, Missoula County, and Beaverhead County, have been invited to share with SAIC member's their experiences and concerns related to the staging of large public events in their local areas. Of specific interest to the SAIC are the processes and procedures used by local officials and the Division of Disaster and Emergency Services (DES) to prepare for and respond to the anti-government rally planned in Libby, the Rainbow Family gathering in Beaverhead County, and the Hell's Angels convention in the Missoula area. The meeting will also include a round table discussion of whether and how relevant state statutes could be improved.

Finally, the December 5 meeting will include a briefing on the biennial budget request for the Montana National Guard's Youth Challenge Program. During the 2001 session, the Legislature will be asked to appropriate for the biennium \$2.24 million in state funding to match \$3.36 million in federal funding. The 22-week Youth Challenge Program targets high school drop outs and offers a military style training program to teach life coping skills, leadership, discipline, and to assist each participant attain a GED.

The December 5 meeting will begin at 8 a.m. in Room 102 of the State Capitol building in Helena. A legislative visit to the Youth Challenge Program in Dillon is planned for Friday, December 8. Although the SAIC is sponsoring this visit, other interested legislators are invited and welcomed to participate.

For further information on the SAIC's activities or to sign up for the legislative visit to the Youth Challenge Program, please contact Sheri Heffelfinger at the Legislative Services Division at (406) 444-3596.

TRANSITION ADVISORY COMMITTEE

To Hold Final Meeting of Interim... The Electric Industry Restructuring Transition Advisory Committee (TAC) will hold its final meeting of the interim on Thursday, December 7, in Room 172 of the State Capitol building in Helena. The dominant theme of the meeting will be "New Players and New Directions", as the Public Service Commission has 2 newly elected members, and the 57th Legislature will feature 2 new committees (Senate Energy and Telecommunications; House Energy, Telecommunications, and State-Foreign Relations) as well as a raft of bills aimed at revising the restructuring laws.

Among the discussion topics will be the PSC's decision to extend the transition period, possible modifications to the default supplier provisions, enabling rural electric cooperatives to serve customers in urban areas, and various incentives to stimulate the construction of new generation facilities in Montana.

The draft agenda is available from staff or on the TAC web page. Contact

Research Analyst Stephen Maly or visit http://leg.state.us/Interim_Committees/TAC.

PUBLIC INFORMATION SUBCOMMITTEE

Subcommittee Recommends Legislation... The Public Information Subcommittee of the Legislative Council met in the evening on November 16 to review the status of the closed circuit/Internet experiment for the 2001 legislative session (code named TVX) and to discuss the details of a draft bill (LC 344) to establish a gavel-to-gavel broadcasting service. The Subcommittee reported to the full Council on the following day, and the Council agreed to request the bill draft. Rep. Mark Noennig agreed to sponsor the bill, which includes an appropriation to purchase the necessary infrastructure and fund a biennial contract with a qualified nonprofit system operator.

A staff report to accompany the draft legislation is nearing completion and will be available in mid-December. For further information, contact Research Analyst Stephen Maly at 444-3064 or by e-mail at <smaly@state.mt.us>.

THE BACK PAGE

EARNING A GENTLEMAN'S C FROM ELECTORAL COLLEGE

By Gordy Higgins, Research Analyst
Legislative Services Division

Popular State Challenges Embattled Electoral College in Championship Endgame.

Helena - October 2000. In a rivalry that spans two centuries, an American institution is beset with charges that it is no longer capable or has the wherewithal to capture the big prize. Popular State has been energized in recent weeks and is convinced that it has the depth and the experience to unseat Electoral College in this quadrennial contest. The core combatants of both establishments believe that ultimately, this year's big event will hinge on the strength of their supporters....

Electoral College's Storied Tradition Too Much for Upstart Popular State.

Helena - November 2000. Electoral College fans breathed a collective sigh of relief yesterday as they watched their institution fend off a strong challenge from Popular State. An anonymous source from the winning camp said, "Sure we wanted the 'A', but the professors at Electoral College are pretty tough, we're comfortable with a Gentleman's 'C'." The source continued by saying, "Popular State has tried for years to unseat us, and I imagine that they are preparing for 2004 as we speak. Rest assured, we'll be ready for them".

My apologies to real journalists everywhere, but I just couldn't resist. In an election cycle and on an election night that was billed as one of the closest contests in history, millions of pointyheads like me stayed up much later than usual to watch the networks call, retract, call, retract, and finally throw up their collective hands and simply say what many of us underappreciated armchair analysts had been saying since at least 8:30 p.m. that Tuesday evening; that the race was too close to call. I watched in rapt fascination the excited exhortations of NBC News correspondent Tim Russert scribbling numbers on a whiteboard representing electoral votes next to states still in the process of forecasting winners based on obviously unreliable exit polling. Russert had the same wild-eyed look of a certain, former, Big-Ten basketball coach. "Okay, okay, down by three, post-up here, if you're open, take the shot...." More entertaining still was the commentary of Dan Rather, CBS News anchor, mixing metaphors with the skill of a Studio 54 bartender mixing cosmopolitans, fixing the fate of Al Gore's presidential bid by claiming the "the ax was falling, and it ain't gonna happen." When I finally turned in early the next morning, it appeared that Al Gore had prevailed in the popular vote contest, but neither he nor George W. Bush had secured the necessary electoral votes to declare victory.

What occurred next is one of the more interesting spectacles in American political history.. To some, it didn't matter whether a candidate received the requisite 270 electoral votes. It was as if winning the popular election was something more than just a philosophical victory. However, in Florida, the state's 25 electoral votes would decide the next President. Florida law requires a recount if the margin of victory is within one-half of one percent. The mandatory recount began but was muddled somewhat due to various legal challenges asking for a manual recount of certain ballots in certain counties based on claims that voters were unwittingly "tricked" into voting for Pat Buchanan because of confusing butterfly ballots. Campaign operatives hit the major media outlets deriding the lack of consistent standards governing what was or was not a vote. We all saw video footage of county canvassing boards "divining" the intent of Florida voters by reading "indented," "pregnant," or otherwise "hanging" scraps of paper.

Across the country, high school and college government teachers are positively giddy with excitement. Imagine a real life example that effectively frames the intricacy and arcane machinations of the Electoral College. My college political science professor would be proud that I can recall his efforts to impress upon me the importance the Electoral College has for states like Montana. We are protected, he argued, from urban sophisticates imposing their will on us country cousins.

The principles espoused by the Electoral College began with the election that pitted Thomas Jefferson against arch-rival Aaron Burr. The custom was that small states, realizing that they could not swing much of a voice in presidential elections, attempted to maximize their electoral clout by creating a system that allowed the candidate that carried the state, regardless of the margin of victory, to also carry all of the state's electoral votes. In 1804, the 12th Amendment to the U.S. Constitution was passed to presumably settle, once and for all, any contention about which candidate should rightfully occupy the highest office in America.

For some, it apparently doesn't matter that the Electoral College seems to be working just fine. So what if the eventual winner may actually receive fewer popular votes than his opponent? It has happened twice in the past. In 1876, Rutherford B. Hayes (His Fraudulency) was elevated to the presidency over Samuel Tilden. Benjamin Harrison lost the popular vote in 1888, but won a majority of electoral votes to defeat Grover Cleveland. Following both of these elections, did town criers raise the specter of a constitutional crisis? Evidently they did, and continued to do so for quite some time. Between 1889 and 1946, more than 100 constitutional amendments on Electoral College reform were introduced in Congress. Between 1947 and 1968, another 265 were introduced.

In the days since this election, and in true bipartisan fashion, Representative Ray Lahood from Peoria and Dick Durbin, Illinois' senior Senator, resurrected the ideas of popular vote advocates and introduced legislation to abolish the Electoral College and

replace it with the direct election of the president and vice-president. If Congress were to succeed in placing a constitutional amendment repealing the Electoral College on the ticket, I certainly hope that voters wouldn't be subjected to those pesky butterfly ballots.

The uncertainty of this past election has also spurred Congress to focus on the reliability of state election laws, the development of uniform elections procedures, and the overhaul of 27 types of voting machines. There is even discussion of studying whether there are methods of improving the speed and accuracy of reporting election results and using the Internet as the preferred voting mechanism.

Theodore H. White, a reporter, wrote a book titled, *The Making of the Presidency, 1968*. In it, he provides a chapter on the issues associated with the Electoral College. His points are as cogent today as they were following the 1968 presidential election. White states:

"In this reporter's opinion, the American system of Presidential election has worked for almost two centuries; yet the challenge remains to make it 'more perfect'. No present proposal under debate offers a wiser or better system of choice than the Federal idea underlying the present way Americans choose presidents. In any election, some must be losers and some must be winners and the Federal system has worked, in the experience of this turbulent decade, better than any of the rival proposals would have worked...."

Most Americans seem to be taking the Florida recount and the legal maneuvering in stride, if not a little bemusement. Ultimately, it doesn't matter whether George W. Bush or Al Gore becomes the nation's next President. Both men will, unfortunately, face allegations that their victory was somehow illegitimate. History may prove to be a useful guide for determining the fate of either man.

Reflecting on the election of 1960, Kennedy prevailed over Nixon by less than two-tenths of one percent with over 68 million total votes cast. Hardly a popular vote mandate, but Kennedy's 303 to 219 electoral vote victory was decisive enough to allow him to make something of his first one-hundred days. Similarly, in 1968, Nixon bested Humphrey by only seven-tenths of one percent with over 73 million votes cast. Nixon received 302 electoral votes to Humphrey's 191 votes. If not for George Wallace's 45 electoral votes, Nixon's victory in 1968 could have been considered decisive. On both occasions a system that had been in place for more than 150 years saved America's bacon and allowed the winner in the only contest that counts to begin the process of governing. We should, perhaps, try to view the outcome of the 2000 election in the same light.

Throughout this whole process of watching CNN updates, discussing legal strategies, and seeing our own Governor become a major player on the national political scene,

I've come to realize that the sun will still rise in the East, the stack of bill drafts on my desk still beckons, and eventually, we will have a new President. I've also spent a few minutes a week checking in on an acquaintance of mine whose wife is due with their second child soon. I'm trying to convince them to choose a name that truly represents the gravity of the first presidential election of the new century. There are many from which they can choose. The name I'm lobbying for? Chad, of course.

Have a safe and happy holiday season.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

DECEMBER

December 5, State Administration, Public Retirement Systems, and Veterans' Affairs Committee, Room 102, 8 a.m.

December 7, Transition Advisory Committee, Room 172, 9 a.m.

December 8, State Administration, Public Retirement Systems, and Veterans' Affairs Committee visit to Youth Challenge Program in Dillon

December 8, House, Senate, and Joint Rules Committees (rooms and times to be announced)

December 18-19, Legislative Audit Committee, Room 152

December 25, Christmas, holiday

JANUARY

January 1, New Year's Day, holiday

January 3, 57th Montana Legislature convenes, 12 Noon

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